IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

COURT'S ORDER WHETHER TH CASE IS OR IS NOT
APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of case

Writ Petition No. 713 of 2001 (S/B) **Decided on: July 27, 2006**

A.F.R. (Approved for Reporting)
Not approved for reporting

Date. 27.07.2006

(Initial of Judge)

Note: Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judges for signature.

Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 713 of 2001 (S/B)
(Old No. 3610 of 1986)

Udairaj Singh
S/o Gunnu Singh
R/o Niwar Mundi, P.O. Jaspur,
District Nainital.

…… Petitioner

Versus

1. Deputy Director Agriculture, Kumaun, Nainital.
2. District Agriculture Officer, Muradabad.
3. Director of Agriculture, Lucknow.
4. Tehsildar Kashipur, Nainital.

……. Respondents

Mr. Jitendra Chaudhary, learned counsel for the petitioner.
Mr. Harendra Belwal, Brief Holder for the State.

Hon. Prafulla C. Pant, J.

By means of this writ petition, moved under Article 226 of the Constitution of India, the petitioner has sough writ in the nature of certiorari quashing the recovery citation issued by the Tehsildar Kashipur, Nainital annexed as Annexure -5 to the writ petition. A mandamus has also been sought restraining the respondents from realization of the amount of Rs. 52,199.08 from the petitioner till the criminal proceedings pending against him are decided by the criminal court.

2) I heard learned counsel for the parties and perused the affidavit, counter affidavit and rejoinder affidavit filed by the parties.

3) Brief facts of the case are that the petitioner was appointed as Clerk Grade –III in the office of the District Agriculture Officer, Uttarkashi, vide order dated 11.04.1969, passed by the Joint Director, Agriculture (Administration), Uttar Pradesh, Lucknow. He was later on transferred to district Moradabad under District Agriculture Officer, Moradabad. It appears that certain financial irregularities were found to have been committed by the officials under District Agriculture Officer, Moradabad and petitioner was placed under suspension in connection with said enquiry vide order dated 04.09.1976 (Annexure -1 to the writ petition). It is stated in the writ petition that after the departmental enquiry, the petitioner was dismissed from service vide order dated 29.01.1982 (Annexure -3 to the writ petition). The said order discloses, that apart from dismissing the petitioner from service, a recovery of Rs. 52,199.08 was ordered to be made from the petitioner. In the present petition, the petitioner has challenged said recovery in respect of which recovery citation (Annexure-5) has been issued, on 31.12.1985. The ground on which the recovery has been challenged is that a criminal proceeding relating to offences punishable under Section 409, 468 and 109 of the Indian Penal Code, 1860, are also pending against the petitioner, and unless said proceedings get terminated, the amount in question cannot be recovered. The recovery is also challenged on the ground that the same cannot be made from the property of the petitioner.

4) This writ petition was originally filed by the petitioner before the Allahabad High Court way back in the year 1986, from where the same has been received by way of transfer to this Court, under Section 35 of the U.P. Re-organization Act, 2000, for its disposal.

5) A counter affidavit has been filed on behalf of the respondents in which it is admitted that the petitioner was appointed in the office of the District Agriculture Officer, Uttarkashi and was later transferred to Moradabad. It is also admitted that an enquiry was initiated regarding financial irregularities committed by the officials under District Agriculture Officer, Moradabad. It is also not disputed that the petitioner, in that enquiry, was placed under suspension, and after departmental enquiry he was dismissed from service. It is also not disputed that a recovery of Rs. 52,199.08 was sought to be made from the petitioner and impugned recovery citation was issued. However, it is disputed that the amount cannot be realized till the termination of criminal proceedings pending against the petitioner or on the ground that the same is not recoverable from his property.

6) Learned counsel for the petitioner argued that under Sub Section (1) of Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972, only specific kind of sums can be recovered as arrears of land revenue. In this connection, my attention was drawn to the provision contained in Sub Section (1) of Section 3 of said Act, which reads as under:

"3. Recovery of certain dues as arrears of land revenue.-*(1) Where any person is party,-*

(a) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods, sold to him by the State government or the Corporation, by way of financial assistance; or

(b) to any agreement relating to a loan, advance or grant given to him or relating to credit in respect of, or relating to hire-purchase of goods sold to him, by a banking company or a Government Company, as the case may be, under a State sponsored scheme; or

(c) to any agreement relating to a guarantee given by the State Government or the Corporation in respect of a loan raised by an industrial concern; or

(d) to any agreement providing that any money payable thereunder to the State Government or the Corporation shall be recoverable as arrears of land revenue; and such person-

(i) makes any default in repayment of loan or advance or any instalment thereof; or

(ii) having become liable under the conditions of the grant to refund the grant or any portion thereof,

makes any default in the refund of such grant or portion or any instalment thereof; or

(iii) otherwise fails to comply with the terms of the agreement;

then, in the case of the State Government, such officer as may be authorized in that behalf by the State Government by notification in the Official Gazette, and in the case of the Corporation or a Government company the Managing director (or where there is no Managing Director then the Chairman of the corporation, by whatever name called) (or such officer of the corporation or Government Company as may be authorized in that behalf by the Managing Director or the Chairman) thereof, and in the case of a banking company, the local agent, thereof, by whatever name called, may send a certificate to the Collector, mentioning the sum due from such person and requesting that such sum together with costs of the proceedings be recovered as if it were an arrear of land revenue."

7) The procedure of recovery of land revenue is provided under Section 279 of the U.P. Zamindari Abolition and Land Reform Act, 1950. It is true that all kinds of sums cannot be recovered as arrears of land revenue. But, the argument of learned counsel for the petitioner is misconceived, that there is no other provision except one contained under Section 3 of the U.P. Public Moneys (Recovery of Dues) Act, 1972, which provides the kinds of sums which may be recovered as arrears of land

revenue. Section 4 of the Public Accountants' Default Act, 1850, reads as under:

> **"4. Prosecution of accountants and sureties**.- The person or persons at the head of the office to which any public accountant belongs may proceed against any such public accountant and his sureties for any loss or defalcation in his accounts, as if the amount thereof were an arrear of land-revenue due to Government."

Word **'public accountant'** has been defined under Section 3 of the Public Accountants' Default Act, 1850, which provides that 'public accountant' means any person who as Official Assignee or Trustee, or as Sarbarahkar, is entrusted with the receipt, custody or control of any moneys or securities for money, or the management of any land belonging to any other person or persons, and that includes any person who, by reason of any office held by him in the service of the Central Government or the Government of the State. This definition contained in said Act makes it ample clear that even if the U.P. Public Moneys (recovery of Dues) Act, 1972, is not applicable to the citation in question, the aforesaid Public Accountants' Default Act, 1850, makes the impugned recovery citation as lawful.

8) Learned counsel for the petitioner failed to show me any provision of law which bars departmental recovery of the misappropriated sum, from an official unless the criminal proceedings pending against him get terminated. Therefore, this Court is not ready to accept the submission advanced on behalf of the petitioner in this behalf.

9) For the reasons as discussed above, this writ petition has no force, and the same is liable to be dismissed. The writ petition is dismissed. No order as to costs. (Interim order dated 21.02.1986 automatically stands vacated).

(Prafulla C. Pant, J.)

Dt. 27th July, 2006.
H. Negi